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Supreme Court, U.S.
FILED
NOV 24 2004
OFFICE OF THE CLERK

No. 04-411

IN THE SUPREME COURT OF THE UNITED STATES

DONALD E. ARMSTRONG, POST-BANKRUPTCY PETITION AND AS A BENEFICIARY OF THE DONALD E. ARMSTRONG FAMILY TRUST AND THE DONALD E. ARMSTRONG CHARITABLE REMAINDER UNITRUST, *Petitioner*

v.

JUDITH A. BOULDEN, BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH, et al., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR REHEARING

DONALD E. ARMSTRONG, PRO SE
INDIVIDUALLY, POST-BANKRUPTCY PETITION AND AS BENEFICIARY OF THE DONALD E. ARMSTRONG FAMILY TRUST AND THE DONALD E. ARMSTRONG CHARITABLE REMAINDER UNITRUST
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Petitioner Donald E. Armstrong, individually and post-bankruptcy-petition and as a beneficiary of the Donald E. Armstrong Family Trust ("Family Trust") and the Donald E. Armstrong Charitable Remainder Unitrust ("Charitable Trust") (collectively the "Trusts") ("Armstrong") respectfully petitions for rehearing of the denial of the November 1, 2004 writ of certiorari to review three decisions of the Tenth Circuit Court of Appeals.

QUESTIONS PRESENTED IN PETITION FOR WRIT OF CERTIORARI

1. Are the filing restrictions entered against Donald E. Armstrong ("Armstrong") and others an unconstitutional denial of Armstrong's constitutional right to access to the Courts especially under these facts?

2. Armstrong is not requesting rehearing of Issue 2 in the original Petition.

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INTERVENING CIRCUMSTANCES

Armstrong now has two appeals that the Utah Federal Courts continue to refuse to file after taking Armstrong's filing fees. On July 26, 2004 a Notice of Appeal was filed and filing fees paid in Adversary Proceeding 02-2461. Armstrong continues to await the docketing of this appeal. On September 20, 2004 a Notice of Appeal was filed and filing fees paid in Armstrong's Ch. 11 Bankruptcy Case 00-26592. On October 18, 2004 an Amended Notice of Appeal was filed regarding the September 20, 2004 Notice. Armstrong continues to await the docketing of this appeal.

The Tenth Circuit now has two appeals (Case Numbers 04-4123 and 04-4127) that the Tenth Circuit refuses to consider unless Armstrong pays sanctions from other cases. This is a complete denial of Armstrong's statutory and constitutional right to access to the courts. Armstrong submits that the Court may not have considered the fact that taking Armstrong's filing fees but not allowing Armstrong to be heard is a further denial of Armstrong's constitutional rights. Armstrong also filed a motion to pursue other cases that the Court has never addressed. Filing restrictions that are never considered are complete denials of the constitutional right to access to the courts.

Armstrong is being denied the right to even appear in court or file pleadings, cases or appeals of any kind. Armstrong suggests the Court may not have fully considered the impact of this. This is a complete denial of Armstrong's constitutional and statutory right to be heard and to a review of any court decisions. Armstrong is denied the right to be heard in the district or bankruptcy courts and to appeal any decisions entered against Armstrong.

This concept is akin to tying Armstrong's, or any

party representing themselves, hands behind his/their back and allowing all citizens to attack at will. It is similar to the ancient punishment of locking alleged lawbreakers to stocks allowing all citizens to throw rocks and other assorted items at them at will. This is not what this country or this Court stands for.

This Court has consistently upheld the basic due process rights of jurisdiction, notice and a full and fair opportunity to be heard before an unbiased and impartial tribunal. *Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)* ("*Mullane*"); and *Hansberry v. Lee, 311 U.S. 32, 40 (1940)* ("*Lee*"); *BMW of North America, Inc. v. Gore, 517 U.S. 559, 568, (1996)* ("*BMW*"); *State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S.Ct. 1513, (U.S.,2003)* ("*State Farm*"); *United States v. Bajakajian, 524 U.S. 321 (1998)* ("*Bajakajian*"); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001)* ("*Cooper*"); *Apache Corp. v. Moore, 517 U.S. 1217 (1996)* ("*Apache*"); *Armstrong v. Manzo, 380 U.S. 545 (1965)* ("*Manzo*"); *Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988)* ("*Peralta*"). With the denial of Armstrong's petition for writ of certiorari, this Court has refused to uphold the constitutional right to access to the courts.

The Utah Federal Courts and the Tenth Circuit Court of Appeals have entered and affirmed filing restrictions against Armstrong that completely deny Armstrong the constitutional right to access to the courts. *U.S.C.A. Const. Amend. I* These filing restrictions do not include specific findings against Armstrong but require that Armstrong cannot file any pleadings without permission. The "filing restrictions" contain two sentences and do not provide any standard for Armstrong to address. Under the facts of these cases, Armstrong is completely denied access to the courts. These filing restrictions apply to any claim or issue Armstrong might present whether it

has ever been presented or addressed in any other proceeding or not. In fact, the Utah courts have allowed Armstrongs' adversaries to pursue Armstrong while denying Armstrong the right to even defend himself.

Armstrong sought permission to file numerous pleadings according to these filing restrictions only to be refused continually—*if the court even responds.* The court generally has not responded at all to Armstrong's requests for permission. There has never been a hearing on Armstrong's requests for permission. Armstrong has never even appeared before the judge that entered the filing restrictions—Judge Dee Benson. Judge Benson has never met Armstrong.

The denial of the Petition for Writ of Certiorari will be cited as this Court's blessing on filing restrictions preventing people representing themselves from being heard in complete derogation of all of this Court's rulings upholding the right to be heard. *Mullane, Lee, BMW, State Farm, Bajakajian, Peralta* and *Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 2648 (U.S.,2004) ("These essential constitutional promises [referring to due process and notice issues] may not be eroded.")

This is completely contrary to the fundamental foundation of the judiciary system of our government. The federal courts are the guardians of our Constitution to ensure the American people the promise of fairness and equal justice under the law for all citizens.[1] If lower courts are allowed to circumvent this review process, then one must conclude that the guardians have relinquished their duty; therefore, accountability for fairness, equal treatment and justice fails.

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[1]Supreme Court of the United States, "The Court and Constitutional Interpretation", Supreme Court Historical Society, <www.supremecourtus.gov#about#constitutional interpretation> (23 Nov. 2004)

BACKGROUND

Armstrong refers the Court to the background section in the Petition for Writ of Certiorari. Armstrong merely adds to the background as necessary.

Armstrong paid the filing fees in two Utah bankruptcy court appeals and two Tenth Circuit Appeals. The Utah district court and the Tenth Circuit refuse to proceed with those appeals.

Armstrong's Utah bankruptcy case 00-26592 has no more funds to distribute to unsecured creditors and the estate never distributed any funds to unsecured creditors. There is no purpose for 00-26592 to continue except to enforce and use these filing restrictions against Armstrong. Additionally, the Utah district court filing restrictions completely deny Armstrong the right to appear in court at all. Surely this Court cannot condone these restrictions by denying the Petition for Writ of Certiorari. Even after Armstrong's Chapter 11 Bankruptcy Case 00-26592 is closed, the filing restrictions remain and Armstrong will not be permitted to appear in court for any reason without an arbitrary and discretionary blessing from a judge. This "permission" is not based on any standards or tests and is wholly arbitrary. These restrictions apply to Armstrong forever denying Armstrong a bankruptcy fresh start when there is no possible effect on the original complaining parties since the relevant bankruptcies (00-26592 and 99-22588) will be closed. Otherwise, the bankruptcy estates will have to remain open forever. At this point Steppes Apartments, Ltd. ("Steppes") can continue to pursue Armstrong forever while Armstrong can't appear in court at all.

REASONS FOR GRANTING THE PETITION FOR REHEARING

Armstrong refers the Court to the reasons for granting the petition for writ of certiorari in the Petition for Writ of Certiorari.

Armstrong is prevented from presenting ANY claim or issue to the Utah federal courts. The injunctions are not limited to issues that have already been addressed. If a new matter arises that has nothing to do with the prior matters Armstrong is still prevented from being heard. This is unconstitutional and requires this Court's attention.

The principal issue in these filing restrictions is that the parties are representing themselves. That is the only consistent factor. If these same parties engage an attorney then all of a sudden they do have the right to appear in court. When the only issue in question relates to a single class of parties this is unconstitutional discrimination requiring this Court's attention.

It is critical that this Court write an opinion addressing: 1) the extent of constitutional filing restrictions; 2) the tests for entering filing restrictions; 3) the limits of filing restrictions; 4) whether courts can enter general filing restrictions preventing parties from filing any pleading; and 5) whether court clerks can take a party's payment of filing fees and then refuse to allow the party to be heard.

These are critical issues. To deny the Petition for Writ of Certiorari is to confirm a trend prohibiting parties representing themselves from appearing in court including on matters that have never been heard. This is clearly unconstitutional and inconsistent with all of this Court's prior rulings.

It is clearly unconstitutional to allow one party to be able to pursue another while preventing the second

party from asserting their rights. How can this possibly be consistent with due process and this Court's rulings?

The law in this country appears to be completely subjective. The law is only applied for parties the courts favor. Parties representing themselves have essentially no rights. The only matters courts consider are filed by important parties, parties with extensive financial resources or favored attorneys. Parties representing themselves are entitled to the exact same rights as all other parties. The U.S. Constitution is based on this fact. The only court that can insist on these principles is this Court.

In Armstrong's experience, the courts in this country primarily rule based on who they wish to "win". Important parties and favored attorneys receive attention. Less important parties and especially parties representing themselves have no rights. It is not a matter of what the facts and the law demand but who is personally favored. Even in this Court, petitions are granted for favored attorneys and law firms and rarely for parties representing themselves. This case is an opportunity for this Court to confirm the very basis of the U.S. Constitution—that all parties, including parties representing themselves, are constitutionally entitled to be heard.

By denying the Petition for Writ of Certiorari, this Court clearly advocates these denials of due process. Forgetting about Armstrong's story and issues, all parties representing themselves in this country are entitled to due process and to be heard. These same parties are allowed to appear in court as long as they are represented by attorneys. This is clear and distinct discrimination against parties representing themselves. The only test is whether the party is represented by an attorney or not.

This is a significant and important issue for this Court to address. It is critical that this Court provide

guidance on these issues. Absent this guidance, the message conveyed is that it is perfectly acceptable to prevent parties representing themselves from being heard. Certainly this Court is not advocating this position.

This case presents compelling questions for this Court. The first question is whether the permanent filing restrictions entered in the United States District Court of the District of Utah are an unconstitutional deprivation of Armstrong's constitutional right to access to the courts. *U.S.C.A. Const. Amend. I* A subpart of that question is the almost unilateral application of filing restrictions against parties that are representing themselves. Virtually all filing restrictions are entered against pro se parties which are a clear class of persons protected by the Equal Protection Clause. *Boddie v. Connecticut, 91 S.Ct. 780, 790 (U.S. 1971)*

Essentially, these filing restrictions label a party representing themselves as an "unsavory person" preventing any full and fair opportunity to be heard on the merits for the rest of the party's life. *State Farm* at 1523 "A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business." This is clear discrimination against parties representing themselves. The First Amendment does not state that ALL parties are entitled to access to the courts ***except*** persons judges use their discretion to label as unworthy or any other group such as parties representing themselves.

ISSUES PRESENTED

1. **ARE THE FILING RESTRICTIONS ENTERED AGAINST DONALD E. ARMSTRONG ("ARMSTRONG") AND OTHERS AN UNCONSTITUTIONAL DENIAL OF**

ARMSTRONG'S CONSTITUTIONAL RIGHT TO ACCESS TO THE COURTS ESPECIALLY UNDER THESE FACTS?

Armstrong refers the Court to Issue 1 in the Petition for Writ of Certiorari.

Armstrong requests the Court to fully consider the implications of denying the Petition relating to Issue 1. Filing restrictions are being entered in the various circuits based on varying standards and tests. The Tenth Circuit has some standards but has failed to honor their own standards in the filing restrictions against Armstrong. There have been no hearings. There are no specific findings of fact. The filing restrictions apply to any pleading or appeal Armstrong could ever file, have no time limits and are not limited to the parties and issues in the original cases. This is clearly unconstitutional.

Additionally, Armstrong has now paid four appellate filing fees where the appellate courts refuse to even consider Armstrong's appeals. This is essentially a breach of contract. The federal rules of procedure statutorily provide that any party can appeal an adverse decision upon the payment of the relevant filing fee. Armstrong paid these filing fees relying on the federal rules of procedure. The courts have taken Armstrong's money but refuse to consider Armstrong's appeal. This is also unconstitutional.

All parties, including parties representing themselves, are entitled to be heard. By denying the petition for writ of certiorari, this Court has now allowed parties representing themselves to be denied the right to be heard. Surely this is an issue that warrants this Court's attention and guidance. Armstrong simply cannot believe that this Court and this country can single out a group of citizens and allow the denial of these citizens' rights to due process and to be heard.

CONCLUSION

It is important for this Court to set standards and tests to guide lower courts in entering filing restrictions, if any; the scope of filing restrictions; what standard of review is appropriate to consider filing restrictions; courts' burdens in findings to enter filing restrictions; and all other considerations. *In re Sindram, 111 S. Ct. 596, (U.S., 1991)* Armstrong suggests these issues are legal and constitutional in nature and must be reviewed *de novo*. This includes that filing restrictions cannot be imposed solely on parties representing themselves and must be applied equally to all classes of citizens.

Parties representing themselves cannot be discriminated against in this way. The only issue in these filing restrictions is that the party representing themselves are restricted but those same parties can file the same cases and claims as long as a licensed attorney will sign the pleadings. As this Court knows, many attorneys file absolutely frivolous pleadings illustrating that having a license to practice law is not a guarantee. ALL PARTIES ARE ENTITLED TO BE HEARD REGARDLESS OF ANY CLASS, INCLUDING REPRESENTING THEMSELVES.

Armstrong asserts that when any party pays an appellate filing fee in a timely manner according to the federal rules of civil procedure that party is entitled to be heard in that appeal. To unilaterally deny that party the right to be heard is a breach of contract, denial of due process and a denial of the constitutional right to be heard. Armstrong suggests this Court must address the disposition of these filing fees. If the courts refuse to consider Armstrong's appeals the courts cannot keep Armstrong's filing fees.

It is absolutely critical that this Court at least order briefing on these issues and allow these important issues to be presented to the Court. Otherwise, the denial is this Court's blessing that parties representing themselves do not have the right to appear in court or be heard.

The Petition for Rehearing on the Petition for Writ of Certiorari should be granted.

Respectfully submitted.

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November 23, 2004

CERTIFICATION OF DONALD E. ARMSTRONG, PRO SE

I, Petitioner Donald E. Armstrong, individually and post-bankruptcy-petition and as a beneficiary of the Donald E. Armstrong Family Trust and the Donald E. Armstrong Charitable Remainder Unitrust, pro se, certifies this petition for rehearing is presented in good faith and is not for purposes of delay. I certify that I have restricted this petition for rehearing to grounds not previously presented in the petition for writ of certiorari and to intervening circumstances which have occurred or which are occurring since the Petition for Writ of Certiorari was filed on September 23, 2004.

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